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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

CC Docket No. 96-45

Federal-State Joint Board on )

Universal Service )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Comments of The Cheyenne River Sioux Telephone Authority and Golden West  
Telecommunications Coop**

**Summary And Introduction**

The Cheyenne River Sioux Telephone Authority ("CRST") and Golden West Telecommunications Coop ("Golden West") hereby submit their comments in response to the Federal Communications Commission's ("FCC" or the "Commission") March 8, 1996, Notice of Proposed Rulemaking and Order Establishing a Joint Board in the above-captioned matter (the "NPRM").<sup>1</sup>

CRST is a tribally owned and operated telephone company providing local exchange service to 2600 subscribers on the Cheyenne River Sioux Indian Reservation in South Dakota. Golden West is a telephone cooperative that provides service to rural South Dakota, including service to approximately 5000 subscribers on the Pine Ridge and Rosebud Sioux reservations.

CRST and Golden West support many of the proposals in the NPRM with respect to improving the availability of both basic and advanced telecommunications services for underserved areas and customers. As a group, Indians have an **average** telephone subscribership

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC No. 96-93 (Mar. 8, 1996).

rate of only 50 percent.<sup>2</sup> In many cases, the actual phone penetration levels are even lower.<sup>3</sup>

Universal Service issues are, therefore, of critical importance to Indians. These issues are equally important to the provision of quality telecommunications services in rural geographic areas generally.

In these comments, CRST and Golden West submit that the primary focus of the universal service plan ultimately adopted by the Commission must be support for the development of quality telecommunications infrastructure in underserved and unserved areas, including tribal lands. To that effect, the Commission should: 1) initiate a Notice of Inquiry proceeding to explore the complex issues presented with respect to tribal governments and telecommunications regulation, and 2) reject systems based on factors other than actual cost, such as proxy methods and competitive bidding, and develop of a cost-based universal service plan which focuses on and strongly supports the continued and further development of quality telecommunications infrastructure on tribal lands and in rural areas.

**I. The Commission Should Initiate A Separate Proceeding To Address Federal Indian Law Issues As They Relate To Universal Service And Telecommunications Regulation Generally**

As an initial matter, the relationship between the Indian tribes and the Federal Government raises a number of issues unique to Indian tribes which must be considered by the Commission and the Joint Board.<sup>4</sup> As sovereign nations, the interests of Indian Tribes in telecommunications

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<sup>2</sup> See Speech By Reed Hundt, Chairman Federal Communications Commission at the Telecompetition '95 Conference, Washington, D.C. (Dec. 5, 1995) ("Our universal service policies are broke and need fixing . . . 50% of rural Native Americans do not have telephone service.")

<sup>3</sup> The Navajo Nation, for example, estimates that nearly 65% of its residents do not have basic telephone service.

<sup>4</sup> There are, for example a number of important jurisdictional issues which ultimately must be addressed by the Commission. The United States Supreme Court, in *Montana v. United States*, 450 U.S. 544 (1981), stated that a tribe retains "inherent power to exercise civil authority over the conduct of non-

law and policy vary in many respects from the concerns of the general public as consumers of telecommunications services. While universal service policies aimed at rural and high cost areas will often benefit tribal people, such policies must be implemented with the knowledge that tribes occupy a dual role with respect to these issues -- they are sovereign governments responsible for the well being of their citizens, as well as underserved consumers of telecommunications services.

The Commission is bound by the requirements of comity and full faith and credit, as well as its responsibilities under the federal trust doctrine<sup>5</sup> to fully consider tribal concerns in the implementation of law and policy affecting tribal interests, and to respond to the issues raised in a manner which is sensitive to tribal sovereignty. In his memorandum outlining the principles which all executive departments and agencies must follow with respect to Indian tribes, President Clinton stated that:

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such

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Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." A comprehensive 1934 Opinion of the Solicitor of the Department of the Interior concluded that "over all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business." 55 Interior Dec. 14, 50 (1934). As the tribes assume more regulatory authority over telecommunications services on tribal land, the FCC must consider the interests of at least three governmental entities, the Federal government, state governments, and tribal governments.

<sup>5</sup> The Trust Doctrine imposes a fiduciary duty on the United States Government to conduct its authority with respect to Indian tribes in a manner which protects the best interests of those tribes. The United States Supreme Court noted in *United States v. Creek Nation*, 295 U.S. 103 (1935), that "governmental power to manage and control Indian property and affairs is not absolute, but is subject to limitation inhering in [] a guardianship." *Id.* at 109-10.

activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.<sup>6</sup>

The principles outlined by the President apply to decisions made by the Commission and are especially relevant to the issues raised in this, and any future, universal service proceeding.

In order to fulfill its trust obligations to Indian tribes, the Commission must specifically address the exceedingly low telephone penetration rates and lack of adequate telecommunications infrastructure on tribal lands. In addition, it must review its universal service rules and policies within the context of tribal sovereignty. Given the unique nature and complexity of these tribal issues, however, they cannot be addressed adequately in the context of this proceeding. The Commission should begin, instead, a separate proceeding to address tribal universal service issues and general federal Indian law issues as they relate to telecommunications regulation on tribal lands.<sup>7</sup> The ultimate outcome of such a proceeding should be the development of a government-to-government relations policy, as well as a set of regulations to guide Commission actions that affect tribal interests.<sup>8</sup>

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<sup>6</sup> Government-to-Government Relations With Native American Tribal Governments, Memorandum for the Heads of Executive Departments and Agencies, 59 Fed. Reg. 22951 (1994)(hereinafter "Government-to-Government Relations").

<sup>7</sup> For example, one issue that a Notice of Inquiry should examine is presented in Section 254(h) of the Telecommunications Act of 1996. As defined, only **state** elementary and secondary schools and libraries eligible for participation in state-based plans for funds are eligible for discounts on universal telecommunications services as provided in Section 254(h). Many schools and libraries established under tribal authority may not meet this definition and could be excluded from the discount program even though they provide the same services as their state authorized counterparts. The Commission must address this potential disparity to ensure that schools and libraries chartered under tribal authority are eligible for the same discounts as state authorized libraries and schools. Other issues will include, the authority of tribal governments to directly regulate universal service within reservation boundaries and the nature of the federal/state/tribal relationship with respect to telecommunications regulation generally, and under the Telecommunications Act of 1996 specifically.

<sup>8</sup> A written policy and set of regulations would satisfy the President's mandate that "[t]he head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal

Because a full discussion of the significance of tribal sovereignty with respect to FCC activities is beyond the scope of this proceeding, the remainder of these comments focus primarily on issues important to rural telecommunications services generally.

## **II. The Definition of Universal Service Should Support The Continued Development Of Services In Underserved And Unserved Areas**

### **A. The Goal of Universal Service Under the Act Is Affordable Telecommunications Services To All**

The Telecommunications Act of 1996<sup>9</sup> mandates quality, affordable telecommunications services for all Americans regardless of geographic location and the cost of providing service.<sup>10</sup> In addition, it provides for expansion of the definition of universal service to include advanced telecommunications technologies beyond basic telephone services and requires reasonable parity of quality and cost between urban and rural services.<sup>11</sup> While the Act requires that Commission to adjust certain rules that implement its universal service programs, the Act itself makes clear that universal service is a mandate, not an aspiration. As a result, any changes made to universal service support mechanisms must not jeopardize existing levels of service and the provision of new service to unserved areas.<sup>12</sup>

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governments.” Government-to-Government Relations at 22951. A Commission Indian policy statement also would provide guidance to carriers operating on tribal lands.

<sup>9</sup> Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat. 56 (1996)(hereinafter the “Act”).

<sup>10</sup> Act at 71.

<sup>11</sup> *Id.*

<sup>12</sup> Specifically, the Commission does not have the latitude to experiment with different universal service mechanisms if the result of such experiments would reduce the level of telecommunications services available to rural and tribal subscribers.

The goal of universal service prior to the Act was to enable local telephone companies to provide affordable service in high-cost areas.<sup>13</sup> This remains the goal under the Act. In its efforts to implement the Act, the Commission must be careful not throw the baby out with the bath water. While the general tone of the Act is deregulatory, the mandates on universal service are quite specific and are not of a deregulatory nature. Therefore, the Commission is divested of any discretion to experiment with “deregulatory” approaches to universal service, such as proxies and competitive bidding, in the hopes of making the system more competitive and efficient, at the expense of overall support for basic services. For rural areas and tribal lands, this lack of discretion means that the Commission must continue support for the development of quality telecommunications infrastructure in underserved and unserved areas.<sup>14</sup>

#### **B. “Core” Services To Be Supported By Universal Service**

CRST and Golden West fully support the provision of advanced telecommunications services to all Americans. The provision of such services, however, is totally dependent on the availability of affordable quality telecommunications infrastructure. The Commission and the Joint Board must acknowledge that for a large number of tribal and rural people, such quality infrastructure is not available.<sup>15</sup> Therefore, universal service cannot focus fully on “advanced” services until “basic” telephone services are made available to all subscribers.

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<sup>13</sup> See e.g. *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241 (1983)(The Universal Service Fund is designed to enable “high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies.”)

<sup>14</sup> This is not to say, of course, that the Commission must ignore competing policies like competition and efficiency. Indeed, these concepts must be considered. These general notions must yield, however, to the specific universal service requirements of the Act.

<sup>15</sup> Even where service is technically “available,” high connection deposit fees and capital contribution requirements often make it economically unfeasible for rural and/or tribal subscribers to obtain even basic telephone service.

The "core" services identified in the NPRM<sup>16</sup> represent a bare minimum list of services to which all Americans must have access. Two additional services are essential to rural and tribal telephone subscribers: data transmission quality service, including ISDN capability,<sup>17</sup> and access to affordable interexchange services.<sup>18</sup> These core services will meet most telecommunications needs of most subscribers. Moreover, by maintaining a manageable list of supported services, the Commission will ensure that universal service mechanisms adequately will support the affordable provision of such services to subscribers in rural areas.

CRST and Golden West support the idea of a separate, more inclusive, definition of universal service for schools, libraries, and health care providers. It is important, however, that support for this expanded definition is implemented in a manner which does not dilute general support for high cost infrastructure in rural and high cost areas. Ultimately, development of advanced telecommunications infrastructure throughout rural America will, as a matter of course, result in the availability of affordable advanced services to such organizations. In no case, however, should the provision of such services to schools, libraries, health care providers and

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<sup>16</sup> These are voice grade access, touch-tone service, single party service, access to emergency services including enhanced 911 service, and access to operator services.

<sup>17</sup> Data transmission quality services will ensure that all Americans have access to the National Information Infrastructure. For most purposes, standard modem connects will be sufficient for the foreseeable future, but where they are not, ISDN capability will meet most high bandwidth needs without requiring replacement of existing copper facilities.

<sup>18</sup> For the majority of subscribers on rural Indian reservations, as well as many rural Americans in general, virtually all calls are long distance calls. Therefore, access to interexchange services are critical as they are the only means of making many important calls, including calls to hospitals, police stations, doctors and fire stations, to name only a few. This fact raises obvious concerns regarding the affordability of telephone service to rural subscribers. Both CRST and Golden West maintain programs to assist subscribers in maintaining or regaining telephone service when disconnection is threatened due to high toll call bills. The Commission should consider the application of such programs to universal service.

community access centers, even at a discount, be considered a sufficient response to the universal service needs in rural areas.

### **III. Universal Service Support Mechanisms Must Encourage The Development Of High Quality Telecommunications Infrastructure in Rural Areas**

The Commission's universal service implementation should encourage and reward infrastructure investment in high-cost areas. The Act requires that the Commission implement a "predictable," "sufficient" system designed to make "quality services . . . available at just, reasonable, and affordable rates,"<sup>19</sup> and ensure that rural, insular and high cost consumers have access to services that are reasonably comparable, in quality and cost, to those available in urban areas.<sup>20</sup> Universal service support also must assist those telecommunications providers that have evidenced a commitment to serving high-cost communities and must be based upon the actual costs related to providing that service. Systems based on considerations other than actual costs, such as competitive bidding or proxy approaches, place the universal service goals of the Act at risk since these approaches will ultimately discourage investment in high-cost areas and will lower support for local rates to high-cost customers. Therefore, these approaches conflict with the purposes of the Act and must be rejected.

The infrastructure development efforts of Golden West in South Dakota provide a good example of the kind of development that the Commission's universal service mechanisms should support. In November of 1993, Golden West acquired certain local exchange properties in South Dakota. Since the acquisition, it has invested over \$2,000,000 in telephone plant and has scheduled another \$2,000,000 in further infrastructure investment for 1996. The company's

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<sup>19</sup> NPRM at ¶ 14.

<sup>20</sup> *Id.*



investments have replaced a 40-year-old switchboard with a state of the art digital remote switch, installed CLASS features for all customers, replaced an analog toll network with a fiber optic network, and supported the ongoing construction of a fiber optic network which will provide customers with equal access for intraLATA long distance service. These efforts have increased dramatically the availability and quality of telecommunications services in these exchanges.

The universal service plan adopted by the Commission should have as its primary objective strong support for such development. The plan should focus on the actual costs of infrastructure development<sup>21</sup> and should allow the affected carrier reliably to recover the difference between building and operating subscriber plant in high-cost areas, and building and operating similar plant in urban areas, from a source other than the rates charged to customers living in the high-cost areas. Absent such a plan, rural telephone companies will not be able to sustain or expand their efforts to develop the kind of ubiquitous telecommunications infrastructure envisioned in the Act.

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<sup>21</sup> The calculation of actual costs may, of course, include certain administrative costs. Those costs must, however, be reasonably related to development and operation of subscriber plant. Universal service support must not be allowed to subsidize inefficient corporate overhead and unnecessary administrative costs.

### Conclusion

The continued provision of universal service support in rural areas and on tribal lands is critical to the provision of high quality telecommunications services to people living in those areas. In its implementation of the Telecommunications Act of 1996, the Commission must ensure that it recognizes the costs associated with providing service in rural areas and that its rules are properly tailored to encourage investment in telephone plant. Rewarding companies for infrastructure development so that the benefits of the National Information Infrastructure will be available to **all** Americans must be the first objective of any universal service plan.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Kimberly E. Thomas, do hereby certify that the foregoing **COMMENTS OF THE CHEYENNE RIVER SIOUX TELEPHONE AUTHORITY AND GOLDEN WEST TELECOMMUNICATIONS COOP** was mailed on this 12th day of February, via first class U.S. mail to the following:

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